

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1803 of 1988

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

SHAIKH IBRAHIM BIN SAYEED ARAB

Versus

STATE OF GUJARAT

Appearance:

MR AS YAMANI for Petitioner
MR V.M PANCHOLI for Respondent No. 1-State
NOTICE SERVED for Respondent No. 2
MR DA BAMBHANIA for Respondent No. 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 01/02/2000

ORAL JUDGEMENT

Heard the learned advocates.

2. The petitioner herein is a Forest Guard who

challenges the order of dismissal dated 3rd April, 1986 made by the Deputy Conservator of Forests and confirmed in Appeal by the Conservator of Forests and the Gujarat Civil Services Tribunal. The facts leading to the present petition are as under :-

3. The petitioner, after serving the military for a few years, joined the service as a Forest Guard under the respondents no. 2 & 3 in the year 1974. In the year 1981 i.e., on 29th June, 1981, a chargesheet was issued against the petitioner for the acts of misconduct referred to in the said chargesheet. The said charges were not accepted by the petitioner and the disciplinary action was initiated against the petitioner. After recording the evidence, the Inquiry Officer held the charges to have been proved. In view of the guilt proved against the petitioner, under order dated 18th August, 1982, he was dismissed from service. The said order was confirmed in appeal on 17th December, 1982. Feeling aggrieved, the petitioner approached the Gujarat Civil Service Tribunal. Under its judgment and order dated 15th September, 1983, the Tribunal held the inquiry to be bad on the ground that the disciplinary authority and the appellate authority were interested parties, and ordered afresh inquiry against the petitioner. Pursuant to the said directions, a fresh inquiry was initiated against the petitioner from the stage of show cause notice and after giving opportunity to the petitioner to show cause. Under the impugned order dated 3rd April, 1986, the petitioner was dismissed from service. The said order was confirmed in Appeal by the appellate authority as well as the Gujarat Civil Services Tribunal. Therefore, the petition.

4. This petition had come up for hearing before Mr. Justice S.K Keshote on 8th October, 1997. The learned Single Judge, after hearing the learned advocates, held that the directions issued by the Tribunal earlier on 15th September, 1983 were not complied with in letter and spirit. What was expected of the Government to hold the inquiry de novo. However, instead, the Government had without holding inquiry afresh, made the impugned order of dismissal on the basis of the records as it stood. Thus, in other words, this Court found the impugned order of dismissal dated 3rd April, 1986 to have been made in violation of the directions issued by the Tribunal. However, the Court also held that on this count alone, the petitioner would not be held free of the charges of unbecoming conduct. The Court, therefore, proceeded further to direct that the respondent should hold the inquiry afresh in compliance with the order dated 15th

September, 1983 made by the Tribunal. Pursuant to the said direction, the respondents appear to have held the inquiry afresh at Amreli as directed by the Court. The report has been placed on the records by the concerned Deputy Conservator of Forests. Upon perusal of the record, it appears that inspite of the best efforts made by the respondents, they have not been able to procure presence of all the witnesses and those of the witnesses who remained present were not in a position to make any statement, after a long passage of time. Hence, it appears that the de novo inquiry, as ordered by this Court under its judgment and order dated 8th October, 1997, is practically impossible. Besides, the Court has held that the impugned order dated 3rd April, 1986 was made in violation of the directions issued by the Tribunal on 15th September, 1983.

5. In above view of the matter, the impugned order dated 3rd April, 1986 having been made in violation of the directions issued by the learned Tribunal requires to be quashed and set-aside. Consequently, the order of the appellate authority dated 2nd January, 1987 and the Tribunal dated 25th June, 1987, also require to be quashed and set-aside. Since the order of dismissal made against the petitioner is quashed and set-aside, he is got to be reinstated in service. As observed by this Court [Coram : Mr. Justice S.K Keshote] under its Order dated 8th October, 1997 merely because the impugned order dated 3rd April, 1986 was made in violation of the directions issued by the Tribunal, the petitioner cannot be said to be exonerated from the charges. However, as observed hereinabove, in view of the passage of time and availability of evidence, the de novo inquiry also is not possible. The matter, therefore, requires to be put an end to. In the aforesaid circumstances, the following directions are issued :-

[A] The impugned order dated 3rd April, 1986 made by the respondent no. 2 and the order dated 2nd January, 1987 made by the respondent no. 3 and the judgment & order dated 25th June, 1987 passed by the Gujarat Civil Services Tribunal; Annexures 'O', 'Q' and 'S' respectively to the petition, are quashed and set-aside. The petitioner is ordered to be reinstated in service as a Forest Guard. The petitioner shall be reinstated in service within a period of four weeks from today.

[B] The period from the date of the order of dismissal i.e. from 3rd April, 1986 till the date of reinstatement, shall be treated as

extra-ordinary leave, without pay.

[C] No further action shall be initiated against the petitioner pursuant to the chargesheet dated 29th June, 1981.

The petition is allowed. Rule is made absolute to the aforesaid extent. The parties shall bear their own costs.

Prakash*